[2018] NZSSAA 45

Reference No. SSA 040/16

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an appeal by**XXXX** of XXXX against a decision of a Benefits Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

S Pezaro - Deputy Chair

K Williams - Member

DECISION ON THE PAPERS

Background

[1] XXXX (the appellant) receives New Zealand superannuation (NZS) paid to him in Australia on a portable basis. He appeals the decision by the Chief Executive to establish and seek recovery of an overpayment of $1,487.63 for NZS payments in certain periods between 12 October 2013 and 5 June 2015. The parties agreed that the Authority determine this appeal on the basis of their written submissions.

[2] The overpayments were the result of changes to the Australian notional rate of superannuation which affected the rate of NZS. When the appellant filed his notice of appeal, the balance of the overpayment after the repayments he had made was $180.58. He has since repaid the overpayment in full and has not disputed the calculation of the overpayment by the Ministry.

[3] The Ministry pays the appellant's NZS entitlement in accordance with the Social Welfare (Reciprocity with Australia) Order 2002 (the agreement). Under the terms of the agreement, the appellant is entitled to the lesser of the notional or proportional rate of NZS. From 1 May 2013, the appellant was granted NZS in Australia at the rate of NZ$188.06 per week.

[4] During the relevant period, there were changes to the Australian notional rate. It appears that each time the Australian authorities advised that the Australian notional rates had been reviewed and amended, the Ministry was required to review the appellant's entitlement to NZS to comply with the agreement. This occurred retrospectively.

The case for the appellant

[5] The appellant states that he is appealing because he is not the one at fault. He asks why he should be penalised for something that is out of his control. He states that he and his wife have supplied all the necessary information to Centrelink Australia who sent it to the Ministry. He argues that the Ministry has made the mistake, which should have been picked up sooner and not have been allowed to accumulate. He says the Ministry has used old information to calculate his entitlement instead of the up to date information that was supplied. He states that he has acted in good faith.

[6] In submissions filed on 24 May 2018, the appellant confirmed that he had no further information to provide to the Authority. He stated that it is up to the Ministry to have correct procedures in place so that errors are not made and clients are not penalised for it.

The case for the Ministry

[7] The Ministry states that it has carried out the reviews correctly based on the information provided by Centrelink. The Ministry says the appellant has not shown that there has been any miscalculation in the rate but appears to object to the time taken to notify him.

[8] The Ministry submits that as there has been no error, s 86(9A) of the Social Security Act 1964 does not apply. This section provides that the Chief Executive may not recover a debt which is caused wholly or partly by an error to which the debtor did not intentionally contribute if certain circumstances are met.

Conclusion

[9] It is clear that the appellant did not contribute to the situation which gave rise to the overpayments. However, neither did the Ministry. The mechanism for paying NZS as a portable arrangement to New Zealanders residing in Australia

will inevitably result in a retrospective adjustment by the Ministry of the rate of NZS if the notional Australian rate changes. This is a situation that people in the same situation as the appellant must accept if they want to take advantage of portable NZS payments.

[10] The Ministry clearly has no ability to influence the time taken by Centrelink to notify it of any changes. We are not satisfied that there has been any inordinate delay in the Ministry's review of the appellant's entitlement in response to changes to the Australian notional rate. Even if there has been some delay, we do not consider that it affects the Ministry's entitlement to recover an amount to which the appellant is not entitled.

[11] We are satisfied that the Ministry was entitled to recover the overpayment of $1,487.63, which has been repaid in full.

Order

[12] The appeal is dismissed.

Dated at **Wellington** this 20th day of September 2018

S Pezaro
Deputy Chair

K Williams
Member